

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

TRENA SPEAR

Claimant

VS.

NICKELL BARRACKS TRAINING CENTER

Respondent

Docket No. 1,004,855

AND

LIBERTY MUTUAL INSURANCE CO.

Insurance Carrier

ORDER

Respondent and its insurance carrier (respondent) requested review of the August 14, 2006, Post-Award Medical Award entered by Administrative Law Judge Bruce E. Moore.

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Post-Award Medical Award.

ISSUES

The Administrative Law Judge (ALJ) found that respondent had stipulated that claimant suffered bilateral knee injuries while employed by respondent. Claimant was treated for injuries to her right knee, but the left knee received no treatment. The ALJ found that over time, without intervening accident or injury, the left knee complaints progressed and claimant is entitled to treatment for those complaints. The ALJ also found that claimant is entitled to treatment for her low back complaints.

Respondent argues that claimant has failed to offer any medical report stating that her need for medical treatment is due to her work-related injury. Respondent asserts that the only medical opinion addressing causation is from Dr. Chris Fevurly, who found that claimant's need for medical treatment for her left knee is due to her genetic make-up and her obesity.

Claimant requests that the ALJ's Post-Award Medical Award be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the record presented, the Board makes the following findings of fact and conclusions of law:

Claimant suffered injuries to both knees in a series of accidents through January 7, 2002. Although claimant complained of pain in her left knee, the problems with her right knee were worse and resulted in a right knee replacement in July 2003. The parties entered into an Agreed Award which was approved by the ALJ and filed with the Division of Workers Compensation on March 9, 2004. That award provided that claimant sustained injuries to her "bilateral lower extremities, resulting in a 43.5% disability to the right knee as a result of this injury."¹ Accordingly, the Agreed Award provided permanent partial disability compensation based upon a scheduled injury to the right leg. It also allowed claimant to make application for future medical, and both parties retained their rights to review and modification.

Claimant has not worked for respondent since May 2003, before her right knee replacement. After her knee replacement in July 2003, she suffered some falls and had revision surgery in October 2004 because of a failure of some of the hardware in her right knee. She has had no more falls since her revision surgery but stated that there have been a couple of times when she felt that her right knee was going to give out. She denies any other intervening injuries.

Claimant testified that her left knee began hurting the same time as her right knee but her right knee hurt much worse. She was treated with Celebrex and Lortab for the pain in her bilateral knees. After the two surgeries on claimant's right knee, the pain in her left knee started to worsen. She complains of a very sharp pain in the interior of her left knee, as well as pain on the outside of the knee. She also complains of clicking, popping, and grinding of the knee.

In January 2006, and again on February 1, 2006, claimant requested that respondent authorize treatment for her left knee.² This was denied. In February 2006, she went to see her personal physician, who sent her to Salina Sports Medicine and Orthopedic Clinic, where she was seen by Amber Radcliffe Sawyers, P.A.-C. on February

¹ Agreed Award filed March 9, 2004, at 2.

² The February 1, 2006, notice of intent letter by Scott M. Price to John R. Emerson only requests approval of medical treatment for claimant's left knee. There is no mention of the low back. Likewise, claimant's Application for Post Award Medical (Form K-WC E-4) filed February 15, 2006, only seeks "treatment for left knee." Again, in a letter to the ALJ dated April 3, 2006, claimant's counsel only requests "that the Court order the respondent to pay for continued treatment of the claimant's left knee."

17, 2006. X-rays of the left knee showed “80% medial joint space narrowing and patellofemoral changes. Lateral joint appears intact.”³ Ms. Sawyers diagnosed claimant with left knee osteoarthritis and gave her an injection.

The parties entered into a Joint Stipulation introducing medical reports of claimant's various physicians, including Drs. Kenneth Jansson, Pedro Murati, Phillip Mills, John Schurman II, Chris Fevurly, Alan Kruckemyer, and Kyle Elmore. Dr. Jansson's medical note of February 4, 2002, states: “[Claimant] clearly has chondromalacia of both patellae much of which is obviously pre-existing, but with the amount of degenerative arthrosis she has and with her weight I have no doubt that the type of activity she describes at work certainly aggravates her knees.”⁴

Dr. Murati, in his rating report of August 22, 2002, rated claimant as having a 5 percent left lower extremity impairment for patellofemoral syndrome of the left knee secondary to overuse.

Dr. Mills examined claimant on February 24, 2003, at the request of the ALJ for an independent medical examination. Dr. Mills diagnosed claimant with degenerative joint disease in the knees bilaterally. He further stated: “[T]here is multifactorial causation to this patient's knee problems including degenerative changes and her obesity. It does appear that her work did permanently aggravate or accelerate the right knee problem.”⁵ In his general examination of claimant, he found that in claimant's standing neutral position, “there was a compensatory lumbar lordosis.”⁶ That is the only mention of claimant's low back in Dr. Mills' report.

Dr. Schurman examined both of claimant's knees on November 17, 2004. At that time, he stated that claimant has developed more and more pain in her left knee which he attributed to significant degenerative changes.

Dr. Fevurly examined claimant on August 8, 2005, at the request of respondent. Dr. Fevurly stated that according to the records from Dr. Jansson, there were advanced degenerative changes and loss of cartilage height in claimant's left knee. He stated: “These changes are causally related to genetic factors and to her body habitus. There is

³ Joint Stipulation filed May 11, 2006, at 4.

⁴ *Id.* at 91.

⁵ *Id.* at 32.

⁶ *Id.* at 31

no established work related event or series of events that significantly contributed to the current left knee degenerative arthritis and subsequent pain.”⁷

Dr. Fevurly’s report also mentions that claimant has had a history of chronic low back pain over the last two to four years. This is the only mention of low back pain in any of the medical records attached to the Joint Stipulation. Claimant did not testify that she had low back pain in her deposition or in her testimony at the post-award medical hearing. Dr. Fevurly opined that claimant’s low back pain was

the result of her current sedentary lifestyle, underlying degenerative changes in the lumbar spine (resulting as a natural consequence of aging), and her body habitus. There is no evidence for back injury resulting from her work activities that occurred nearly three to four years ago; nor is it reasonable to attribute her current back pain to a change in gait as she has spent limited time on her feet over the last 2 years.⁸

In his Post Award Medical Award, the ALJ recites the relevant facts and law. Concerning the left knee, the ALJ concluded: “Claimant has sustained her burden of proof that she needs additional treatment for her left knee complaints, and that the need for treatment stems from her work-related injuries.”⁹ But the ALJ’s award was equivocal concerning the low back. “There is a suggestion in the record that Claimant is having or claiming low back pain as a result of her altered gait. If the back complaints derive from the compensable injuries to the knees, Claimant is also entitled to treatment for those complaints.”¹⁰ Nevertheless, the final award of compensation states: “Claimant is entitled to medical care for her left knee and low back complaints.”¹¹

The Board is not persuaded that claimant has met her burden of proof. The record is devoid of any expert medical opinion relating claimant’s current left knee and low back symptoms to either her work with respondent (series of accidents through January 7, 2002) or to her right knee injury and knee replacement surgeries. The only expert medical opinion testimony that directly addresses this issue is to the contrary.

The Board is mindful that expert medical opinion testimony is not required or essential and that claimant’s testimony alone is sufficient evidence of her physical

⁷ *Id.* at 10.

⁸ *Id.*

⁹ ALJ Post Award Medical Award (Aug. 14, 2006) at 5.

¹⁰ *Id.*

¹¹ *Id.* at 6.

condition.¹² But the Board must consider all the evidence. The trier of fact is not bound by the medical testimony, but in this case, the Board considers such expert opinions to be persuasive on the issue of causation. The record taken as a whole fails to support claimant's contention that her present need for medical treatment is causally related to her work with respondent over four years ago. Dr. Fevurly says it is not related, and no physician says that it is.

WHEREFORE, it is the finding, decision and order of the Board that the Post-Award Medical Award of Administrative Law Judge Bruce E. Moore dated August 14, 2006, is reversed.

IT IS SO ORDERED.

Dated this _____ day of November, 2006.

BOARD MEMBER

BOARD MEMBER

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DISSENT

I respectfully disagree with the majority, as I would affirm Judge Moore's decision.

BOARD MEMBER

c: Scott M. Price, Attorney for Claimant
John R. Emerson, Attorney for Respondent and its Insurance Carrier
Bruce E. Moore, Administrative Law Judge

¹² See *Hardman v. City of Iola*, 219 Kan. 840, 549 P.2d 1013 (1976); *Hanson v. Logan U.S.D.* 326, 28 Kan App. 2d 92, 11 P.3d 1184 (2000), *rev. denied* 270 Kan. 898 (2001).